

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED)	
and DYSON, INC.,)	
)	
Plaintiffs,)	
v.)	C.A. No. 05-434-GMS
)	
MAYTAG CORPORATION,)	REDACTED –
)	PUBLIC VERSION
Defendant.)	

**PLAINTIFFS' ANSWERING BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION *IN LIMINE* TO EXCLUDE THE TESTIMONY OF PLAINTIFFS'
EXPERT JOEL H. STECKEL REGARDING CAUSATION**

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Dated: April 23, 2007

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I. SUMMARY OF THE ARGUMENT

Maytag Corporation's ("Maytag") motion to exclude certain testimony of Dr. Joel Steckel, Dyson's causation expert should be denied. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. FACTUAL BACKGROUND

Dr. Joel Steckel is a Professor of Marketing at New York University Stern School of Business, and former Chair of its Marketing Department. He has over 25 years of experience in marketing theory, strategy and consumer choice. He has published three books and over 30 articles on these topics. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ See R. Oliver, "A Cognitive Model of the Antecedents & Consequences of Satisfaction Decisions," *J. Marketing Research*, 460-61 (Nov. 1980) (Tab A) ("As applied to satisfaction decisions, one's level of expectation about product performance, however created, can be seen as an adaptation level. . . Postdecision deviations from the adaptation level are thought to be caused by the degree to which the product exceeds, meets, or falls short of one's expectations"); *see also* Tabs B to G (relevant excerpts from widely-used marketing textbooks and well-respected marketing journals attesting to the direct relationship between unmet pre-purchase expectations and dissatisfied consumers).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. ARGUMENT

Courts must screen expert testimony to determine whether “the ‘particular opinion is based on valid reasoning and reliable methodology’”, but “[t]he analysis of the conclusions themselves” is left to the trier of fact “when the expert is subject to cross-examination.”

[REDACTED]

[REDACTED]

United States v. Trala, 162 F. Supp. 2d 336, 345-46 (D. Del. 2001) (internal citations omitted); see also *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993); *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 745-46 (3d Cir. 1994). *Daubert* and its progeny expressly state that expert testimony does not have to obtain general acceptance or be subject to peer review to be admitted, see *Schneider ex rel. Estate of Schneider v. Fried*, 320 F.3d 396, 406 (3d Cir. 2003), particularly on the issue of causation for purposes of assessing damages, see *Playtex Prods, Inc. v. Procter & Gamble Co.*, 126 Fed. Appx. 32, 35 (2d Cir. 2005) (“In the absence of sufficient data to conduct a regression analysis . . . [damages expert’s method] sufficed as a reliable proxy for the jury to evaluate in order to calculate lost profit[s]”). Where other factors demonstrate the reliability of the expert’s methodology, an expert opinion should not be excluded simply because there is no literature on point.” *Schneider*, 320 F.3d at 406 (internal citations omitted).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Maytag also misstates the Ninth Circuit's evidentiary holding in *FTC v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir. 1994), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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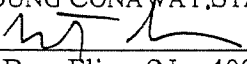
[REDACTED]

[REDACTED]

IV. CONCLUSION

For the foregoing reasons, Maytag's motion to exclude certain testimony of Dyson's expert witness Dr. Joel Steckel regarding causation should be denied.⁵

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CERTIFICATE OF SERVICE

I, Monté T. Squire, hereby certify that on April 30, 2007, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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